

Message Text

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TAGS: EFIN, GW
SUBJECT: EXAMINATION BY US BANK EXAMINERS OF SUBSID-
IARIES OF US BANKS IN THE FEDERAL REPUBLIC

REF: (A) STATE 29293, (B) BONN 14510, SEP 6, 1977

1. WE HAVE NOW RECEIVED THE FOLLOWING CONSOLIDATED
COMMENTS FROM THE GERMAN MINISTRY OF FINANCE AND THE
GERMAN BANKING SUPERVISORY AUTHORITY ON THE DRAFT NOTE
TRANSMITTED IN REFTEL A:

(A) THE GERMAN AUTHORITIES THINK THAT IT WOULD BE
NECESSARY TO PROVIDE IN THE EXCHANGE OF NOTES THAT AN
EXAMINATION BY THE AMERICAN BANKING SUPERVISORY
AUTHORITIES COULD ONLY TAKE PLACE WITH THE AGREEMENT
OF THE MANAGEMENT OF THE GERMAN SUBSIDIARY.

(B) THE NOTE SHOULD SPECIFY THAT THE EXAMINATION
SHOULD BE RESTRICTED TO DETERMINE FACTS FOR PURPOSES
OF BANKING SUPERVISION AND THAT THE AMERICAN EXAMINERS
ARE NOT ALLOWED TO EXERCISE "ACTS OF SOVEREIGNTY" ON
THE TERRITORY OF THE FEDERAL REPUBLIC.

(C) THE FRG WOULD HAVE TO BE ASSURED THAT THE RESULTS
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OF THE EXAMINATIONS WILL IN NO CASE BE MADE AVAILABLE
TO THE TAX AUTHORITIES.

(D) THE NOTE SHOULD SPECIFY THAT THE AMERICAN BANKING
SUPERVISORY AUTHORITIES WOULD NOTIFY THE GERMAN
BANKING SUPERVISORY AUTHORITIES OF INTENDED
EXAMINATIONS IN THE SAME MANNER AS THEY NOW DO IN

THE CASE OF EXAMINATION OF AMERICAN BRANCHES.

(E) THE AMERICAN EXAMINERS SHOULD BE REQUIRED TO INFORM THE GERMAN BANKING SUPERVISORY AUTHORITIES IMMEDIATELY IF THEIR EXAMINATION SHOWS ANY IRREGULARITIES IN THE BUSINESS OF THE SUBSIDIARY OR THAT ANY OF THE ASSETS ENTRUSTED TO THE SUBSIDIARY ARE IN DANGER OF LOSS.

(F) THE FINANCE MINISTRY ALSO TOLD US THAT THEY THOUGHT OUR NEW DRAFT NOTE TO BE LESS FORTHCOMING IN THE CASE OF RECIPROCITY THAN THE NOTE OF MARCH 16, 1972, CONCERNING THE EXAMINATION OF BRANCHES BECAUSE THE NEW NOTE DID NOT INCLUDE A SENTENCE EQUIVALENT TO THE ONE IN THE OLD NOTE STATING THAT "BANKING AUTHORITIES IN ALL STATES WHERE THERE ARE FOREIGN BANK BRANCHES PERMIT EXAMINATION BY FOREIGN BANK AUTHORITIES." WE POINTED OUT THAT THE REASON FOR THE OMISSION OF THAT SENTENCE PROBABLY WAS THAT AT THE MOMENT THERE ARE NO GERMAN BANK SUBSIDIARIES IN ANY STATE AND SUCH A SENTENCE THUS WOULD BE MEANINGLESS. THE FINANCE MINISTRY ACCEPTED THIS ARGUMENT BUT ASKED THAT WE LET THEM KNOW WHAT THE EXPERIENCE HAS BEEN IN CASE OF OTHER FOREIGN BANKING SUPERVISORY AUTHORITIES WHO HAVE REQUESTED EXAMINATION OF THEIR SUBSIDIARIES IN THE UNITED STATES.
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2. THE FINANCE MINISTRY STRESSED THROUGHOUT THAT ALL OF THE ABOVE COMMENTS AND SUGGESTIONS HAVE BEEN MADE ONLY FROM THE POINT OF VIEW OF THE FINANCE MINISTRY AND THE BANKING SUPERVISORY AUTHORITY. THEY HAVE NOT YET BEEN CLEARED WITH THE FOREIGN OFFICE AND ARE NOT INTENDED TO PREJUDICE IN ANY WAY A DECISION BY THE GERMAN GOVERNMENT WHETHER IT IS READY TO CONCLUDE A RECIPROCAL AGREEMENT ON THIS SUBJECT WITH THE UNITED STATES. THE FINANCE MINISTRY NEVERTHELESS SUGGESTS THAT FINAL CLEARANCE WITHIN THE GERMAN GOVERNMENT WOULD BE FACILITATED BY FIRST CLARIFYING THE ABOVE POINTS AND SUGGESTS THAT WE SUBMIT MODIFIED WORDING TO IT ON THE ABOVE POINTS FOR ANY FURTHER CLARIFICATION PRIOR TO FORMALLY APPROACHING THE FOREIGN OFFICE.
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